General Teamsters Local 959, State of Alaska *and* Totem Ocean Trailer Express, Inc. *and* The Alaska Railroad *and* Northern Stevedoring and Handling Corporation *and* Odom Corporation d/b/a Anchorage Cold Storage. Cases 19-CC-1364, 19-CC-1365, 19-CC-1395, 19-CC-1393, and 19-CC-1394

May 17, 1983

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

On September 29, 1982, Administrative Law Judge William L. Schmidt issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief; General Counsel filed limited exceptions, a supporting brief, and a brief in support of the Administrative Law Judge's Decision; Charging Parties Odom Corporation and The Alaska Railroad each filed answering briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order.[2]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, General Teamsters Local 959, State of Alaska, Anchorage, Alaska, its officers, agents, and representatives, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

[1] Since we do not find The Alaska Railroad to be an ally of Odom Corporation, we need not pass on General Counsel's argument that, as a matter of public policy, The Alaska Railroad should be exempted from an application of the "ally doctrine."

[2] Respondent has requested oral argument. This request is hereby denied as the record, the exceptions, and the briefs adequately present the issues and the positions of the parties.

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT induce or encourage any individual employed by The Alaska Railroad, Northern Stevedoring and Handling Corporation, Vessel Engineering and Development Corporation, Alaska Aggregate, Inc., d/b/a Pacific Western Lines, or any other person, to engage in a strike or refusal in the course of his employment to perform any services, where an object thereof is to force or require The Alaska Railroad, Vessel Engineering and Development Corporation, or Alaska Aggregate, Inc., d/b/a Pacific Western Lines, or any other person, to cease doing business with Odom Corporation d/b/a Anchorage Cold Storage, or to force or require Northern Stevedoring and Handling Corporation, or any other person, to cease doing business with The Alaska Railroad in order to force or require The Alaska Railroad to cease doing business with Odom Corporation d/b/a Anchorage Cold Storage.

WE WILL NOT threaten, coerce, or restrain The Alaska Railroad, Northern Stevedoring and Handling Corporation, Vessel Engineering and Development Corporation, Alaska Aggregate, Inc., d/b/a Pacific Western Lines, or any other person, where an object thereof is to force or require The Alaska Railroad, Vessel Engineering and Development Corporation, Alaska Aggregate, Inc., d/b/a Pacific Western Lines, or any other person, to cease doing business with Odom Corporation d/b/a Anchorage Cold Storage, or to force or require Northern Stevedoring and Handling Corporation, or any other person, to cease doing business with The Alaska Railroad in order to force or require The Alaska Railroad to cease doing business with Odom Corporation d/b/a Anchorage Cold Storage.

GENERAL TEAMSTERS LOCAL 959,
STATE OF ALASKA

DECISION

STATEMENT OF THE CASE

WILLIAM L. SCHMIDT, Administrative Law Judge: Pursuant to the charges filed in the various cases, the Acting Regional Director for Region 19 of the National Labor Relations Board (NLRB or Board), on behalf of the General Counsel of the NLRB, issued consolidated complaints on October 22, 1981,[1] and January 12, 1982, alleging that General Teamsters Local 959, State of Alaska (Respondent), violated Section 8(b)(4)(i) and (ii)(B) of the Act.[2] Respondent filed timely answers to each complaint denying the commission of any unfair labor practices and asserting certain affirmative defenses.[3] In March 1982, a hearing was conducted before me for 4 consecutive days at Anchorage, Alaska, during which all parties were provided with the opportunity to appear, present evidence, and make arguments. The parties were provided with the opportunity to file briefs following the close of hearing.

On the basis of the entire record in these proceedings, my observation of the witnesses who appeared before me, and my careful consideration of the post-hearing briefs[4] filed in this matter, I hereby make the following:

FINDINGS OF FACT

I. JURISDICTION

Odom Corporation (the primary employer in this dispute) is a Delaware corporation which maintains an office and place of business in Anchorage, Alaska, where it is engaged in the business of warehousing, wholesaling, and distributing drygoods, soft drinks, beer, wine, and liquor under the name of Anchorage Cold Storage (ACS). During the 12-month period preceding the issuance of the complaint (a representative period), ACS purchased and caused to be transferred and delivered to its facilities within the State of Alaska goods and materials valued in excess of $50,000 directly from suppliers located outside the State of Alaska. ACS is now, and has been at all material times, an employer within the meaning of Section 2(2) of the Act, engaged in commerce or a business affecting commerce within the meaning of Section 2(6) and (7) of the Act. It would effectuate the purposes of the Act to assert jurisdiction over the dispute involved herein.

On the basis of the evidence herein it is also concluded that the following entities are "persons" within the meaning of Section 2(1) and Section 8(b)(4) of the Act: The Alaska Railroad (ARR); Northern Stevedoring and Handling Corporation (Northern); Vessel Engineering and Development Corporation (VEDCO); Alaska Aggregate, Inc. d/b/a Pacific Western Lines (Pacific); and Alexander and Associates (AA).

[1] Unless specified otherwise, all dates refer to calendar year 1981.

[2] The various charges were filed on the following dates: Case 19-CC-1364, September 1; Case 19-CC-1365, September 2; Cases 19-CC-1393, 19-CC-1394, 19-CC-1395, December 21.

[3] The two complaints were consolidated for hearing on February 9, 1982.

[4] Helpful briefs were received from the General Counsel, the Respondent, Odom Corporation, and The Alaska Railroad.

II. THE LABOR ORGANIZATION INVOLVED

Respondent is now, and has been at all material times, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Evidence*

1. Pertinent preliminaries

As noted above, ACS is engaged in business as a wholesaler and distributor of drygoods, meats, produce, groceries, soft drinks, and alcoholic beverages. It maintains two warehouse facilities in Anchorage, Alaska, and one facility in Fairbanks, Alaska. The Fairbanks facility is not involved in the instant dispute but it is involved in the underlying labor dispute.

The Union has for a number of years represented seven separate units of ACS employees in Anchorage and an eighth unit in Fairbanks. The most recent collective-bargaining agreement (which was applicable to all units) expired on June 29, 1980, and on June 29, 1981, the Union commenced a strike against ACS in support of its demands for a new collective-bargaining agreement. Certain of the Union's picketing activities at or about the premises of ARR in Anchorage and Seward, Alaska, in August, September, October, and December 1981, gave rise to the instant complaint. The Union contends that the picketing activities claimed unlawful by the General Counsel and the Charging Parties were all permissible because ARR became an ally of ACS following the commencement of the strike by performing certain shipping services for ACS. To understand the various contentions of the parties, it is first necessary to examine the manner in which ACS's goods were delivered to its warehouses prior to the strike, the post-strike delivery operations, and the reasons for the change in operations.

2. Prestrike shipping arrangements

With the exception of an insignificant portion of produce grown in Alaska, all of ACS's inventory is purchased in the "lower 48" and shipped to Alaska. Before the strike commenced, approximately 85 percent of the goods sold and distributed by ACS were shipped to Alaska in the ocean-going vessels of Sea-Land Service (Sea-Land) and Totem Ocean Express (Tote). Goods shipped by Sea-Land were transported in containers; goods shipped by Totem were generally carried aboard Tote's vessel in a rubber-tired van (known as a roll-on, roll-off system). Both shipping companies have facilities at the Anchorage City Dock where their vessels are unloaded. If a shipper is not able to immediately claim its goods, the van or the container may be transported to an adjacent holding lot for later pickup. ACS employed one unit employee (Seaborn J. Buckalew III) assigned full time to pull Tote vans or a skeleton bearing Sea-Land containers to the ACS warehouse in Anchorage for unloading by ACS warehouse (unit) employees and then returning the van or container to the shipping company. On Mondays, three additional employees were usually assigned to assist in this work and on Fridays, one addi-

tional employee assisted. Buckalew and those who assisted him on a part-time basis were employed in the city liquor drivers unit but they delivered all types of goods to the ACS Anchorage warehouses.

The remaining 15 percent of ACS's products were shipped to Alaska on the hydrotrain.[5] The hydrotrain was a barge bearing railroad boxcars. These barges docked at Whittier, Alaska, and the boxcars were unloaded onto the ARR spur at Whittier. The ARR locomotive then pulled the boxcars along to their destinations along its route. ACS's products arriving in this fashion came to Anchorage. From January 1, 1974, to June 7, 1981, 139 boxcars were shipped on the hydrotrain system for ACS. All but 24 were loaded with beer. Nothing but beer was shipped on the hydrotrain in the 2-year period preceding the strike. Most often goods destined for ACS which were shipped via hydrotrain were stored in an ARR warehouse and then transported to an ACS warehouse when need by an ARR employee in a rubber-tired vehicle but, on some occasions, the hydrotrain boxcars were spotted directly at the ACS warehouse on a railroad spur where they were unloaded by ACS employees. On a few occasions, ACS employees picked up the goods shipped by hydrotrain at the ARR yard and transported them directly to a customer. The latter situation was the rarer exception which occurred only when there was an extreme rush or a large bulk order.

3. Post-strike shipping arrangements

When Respondent commenced its picketing of ACS facilities in Anchorage and Fairbanks, it also picketed the Seattle facilities of Sea-Land and Tote. As a consequence, Sea-Land and Tote refused further bookings for ACS products apparently as a defensive measure against Respondent's picketing. Because these two shipping companies were utilized to transport about 85 percent of the ACS inventory to Alaska, the refusal of Sea-Land and Tote obviously created a significant impediment for ACS's plan to continue operations during the strike.

Initially ACS entered into surreptitious arrangements with other Anchorage businesses to book shipments destined for ACS on Sea-Land and Tote in the name of the other firms. This appears to have been only a short-term solution pending the completion of alternate arrangements for ACS to ship its goods to Alaska. According to ACS's president, Milton Odom, arrangements were made for the charter of a tug and barges to transport containers bearing ACS goods in July 1981. As a part of the alternate arrangements, Odom also met with the ARR general manager, Frank Jones, for the purpose of arranging to off-load the containers at the ARR dock in Seward and to transport the containers by gondola car from Seward to Anchorage, a distance of 120 miles. At its dock in Seward, ARR has contractual agreement with Northern to perform stevedoring services. Jones assured Odom that ARR's employees—who are prohibited from striking because they are employed by the U.S. Government—would unload the barges if any difficulty arose with the Northern's employees refusing to perform the longshore work.[6] In addition, ARR did not have a tariff at the time for the shipment of containerized goods from Seward to Anchorage, but this was rectified by the ARR marketing and sales manager, John T. Gray. Neither Jones' meeting with potential customers nor Gray's efforts in the preparation of a new tariff to meet a new situation can be characterized as the least bit unusual. On the contrary, both Jones and Gray credibly testified that efforts, which they made on behalf of ACS in July 1981, were typical of duties which they routinely perform in their respective positions.

As a consequence of the foregoing arrangements, the first barge bearing containers destined for ACS arrived at the ARR dock in Seward on August 24. The unloading operation commenced on August 25 and, with the exception of 18 containers, was completed by August 28 following interruptions resulting from Respondent's picketing discussed further below. The remaining 18 containers were loaded on gondola cars on October 10. Another barge bearing ACS containers was delivered to the Anchorage City Dock in October but nothing occurred in connection with the unloading of the October barge which is the subject of an allegation in the instant complaint.

In late November, ACS entered into a bareboat charter agreement with Pacific for unmanned barge and a towage agreement with VEDCO providing for the towing of a third barge ladened with containers of its inventory. This barge arrived at Seward on December 20 and the picketing which occurred in connection with the off-loading of this barge is likewise discussed below.

All of the containers which were shipped on both of the barges which docked at Seward were transported from the ARR yard in Anchorage to the ACS warehouse by ACS employees utilizing the skeleton transporting device formerly used in connection with the Sea-Land shipments. The distances to the ACS warehouses from the ARR yard and the Anchorage City dock are roughly equivalent.

ACS continued to use the hydrotrain service following the commencement of the strike. However, the evidence indicates that the type of goods shipped by hydrotrain were more varied following the strike. Thus, between June 29 and January 28, 1982, 44 carloads were shipped by the hydrotrain. Only 13 carloads were limited to beer. Two carloads contained beer and other products and the remaining carloads contained various nonbeer items. The evidence does not indicate that there was a significant alteration in the practice with respect to the disposition of these carloads upon their arrival in Anchorage from Whittier, but in August ARR did change its tariff so that the delivery by ARR's rubber-tired vehicles from the ARR yard or storage warehouses was no longer provided as a part of the tariff from the Whittier hydrotrain dock. There is no evidence that this change resulted from ARR's business with ACS.

[5] Only an insignificant portion of ACS's inventory arrived by air freight or over the Alcan Highway.

[6] The Alaska Railroad was established pursuant to 43 U.S.C. Section 975, *et seq.*

4. The picketing

When Northern's stevedores commenced unloading the barge and loading the ARR gondola cars with the ACS containers on August 25, agents of Respondent commenced picketing at the entrance to the ARR premises in Seward with signs reading, "Local 959 on strike against the Alaska Railroad, an ally of Anchorage Cold Storage and Odom Corporation." Subsequently that same day, some striking ACS employees joined in the picketing with signs which referred only to ACS and Odom but those were changed after a short period so that they too made reference to ARR as an ally of ACS. At the time that the picketing commenced, Northern's stevedores ceased work and left the ARR premises. The record is sufficient to warrant the inference—which I have made—that the stevedores did so as a consequence of a prearranged plan which was made with agents of Respondent in the few days prior to the commencement of the picketing. The picketing continued until a temporary restraining order was issued against the labor organization representing the stevedores on August 7 and resumed after that order was stayed by the Ninth Circuit on August 28.[7] In the interim, all but 18 of the containers were unloaded from the barge. The picketing continued until October 10, when the last of the ACS containers was finally removed from the ARR premises in Seward.

The next barge arrived in Seward on December 20. In port shortly afterward was a pipe ship which had an unloading priority. While Northern's stevedores unloaded the pipe ship, agents of the Respondent engaged in waterborne picketing around the perimeter of the tug and barge. On this occasion, the picket sign attached to the boat read, "Teamsters Local 959 on strike against the Odom Corporation, Anchorage Cold Storage, Inc., and its related operations." When Northern stevedores commenced unloading the tug and barge on December 30, agents of Respondent again commenced picketing at the entrance of the ARR premises in Seward and work halted until the picketing was restrained under Section 10(l) of the Act.

In addition to the Seward picketing described above, the evidence shows that Respondent picketed at ARR's yard office, mechanical shop area, and the team track area, all located in Anchorage. The team track area is the location where ARR's railcars are loaded and unloaded. This picketing commenced on Sunday, August 30. According to Gray, this period would have been after the containers arrived on the ARR gondola cars from Seward.

No attempt was made to establish that the pickets either at Seward or Anchorage were limited to times when ACS employees were present. On the contrary, there is an abundance of evidence that no ACS employees were present in Seward for almost all of the time the picketing was occurring there. Likewise, there was no effort to establish the presence of ACS employees in the ARR areas in Anchorage when the picketing occurred there. Although there may have been occasions when the ACS employees may have been in the vicinity of the team track area, no effort was made to show that any ACS employee even would have occasion to be present in the vicinity of ARR's yard office or mechanical shop.

[7] My finding about the Respondent and Northern's stevedores is based, in part, on the deference shown by Respondent by not picketing while the stevedores were legally restrained from striking and the deference shown in December when Respondent narrowly limited its picketing so as not to interfere with the unloading of a pipe ship.

B. *The Contentions*

The thrust of all of the argument in this case is directed toward the determination as to whether or not ARR at some time following the commencement of the ACS strike allied itself with ACS so that Respondent was justified in picketing at the ARR premises at times when no ACS employees were present. Normally, this determination is a black or white issue but the General Counsel, apparently believing that ARR did become allied with ACS, seeks to excuse such conduct on grounds of public policy. Before discussing the General Counsel's esoteric arguments, I shall treat the more conventional arguments of all of the parties.

The Respondent believes that ARR became allied with ACS in two separate ways. First, Respondent contends that the movement of all containerized goods from the area of the water carrier's dock is bargaining unit work. Accordingly, by transporting containers on the gondola cars from Seward to Anchorage, ARR was performing bargaining unit work. In addition, Respondent contends that ARR, by transporting items other than beer from Whittier under the hydrotrain arrangement, also amounted to the performance of bargaining unit work because the nonbeer products would have otherwise been transported by the ACS employees in containers or vans. In addition, the Respondent seeks to justify the December picketing at Seward by arguing that VEDCO was an agent of or had become allied with ACS. Presumably, because VEDCO's crew was present throughout most of the December picketing of Seward, Respondent believes its conduct was lawful for that reason.

The General Counsel, ACS, and ARR all dispute Respondent's broad jurisdictional assertions especially with regard to the work pertaining to the containers. The ARR brief succinctly summarized their contentions in this regard by arguing that "in no case did the bargaining unit work ever include more than the local cartage from the Anchorage staging area to the Anchorage warehouse of [ACS]."

ARR also argues that with respect to the hydrotrain work, it is not in a position to know specifically what commodities are contained in the cars until they are opened and, hence, it would be impossible for it to knowingly undertake to perform bargaining unit work. ACS concedes that only beer products were transported by means of the hydrotrain in the 2-year period prior to the strike but it argues that no inference should be made that ACS was foreclosed from using the hydrotrain to ship other products. On the contrary, ACS contends its broader 7-year history of hydrotrain shipping amply demonstrates its frequent use of the hydrotrain to ship nonbeer products. Moreover, ACS argues that regardless of the contents of the hydrotrain boxcars, the amount of

shipping by this means did not significantly increase after the strike.

The General Counsel ia clearly troubled by the hydrotrain aspect of this case. Employing a plethora of negatives the General Counsel asserted in his brief that he "does not contend that ARR's hauling of nonbeer products in boxcars after the strike is not 'struck work.'" Even assuming that ARR ARR performed struck work by hauling nonbeer goods in the hydrotrain boxcars after the strike commenced, the General Counsel believes ARR retained its neutral status since by performing such work, ARR "was carrying out its statutory purpose and furthering public policies and goals established by Congress." The General Counsel's brief goes on, "ARR could not refuse to perform its Congressionally mandated transportation functions for [ACS] or anyone else without risking the wrath of Congress." Even more boldly, ACS asserts that the Board is "wholly WITHOUT LEGISLATIVE AUTHORITY to find ARR an ally" on the basis of the implications in *Teamsters Local 324 (Truck Operators League of Oregon)*, 122 NLRB 25 (1958). Relying on the same case, Respondent argues that the General Counsel's effort to carve out an ARR exception to the ally doctrine should be rejected. ARR makes no contention that it should be accorded any special status *vis-a-vis* the ally doctrine. Finally, the General Counsel, contrary to Respondent, believes that if it is found that ARR is performing struck work, Respondent's picketing should be limited to those locations where ARR is actually engaged in the performance of such struck work.

C. *Additional Findings and Conclusions*

The secondary boycott provisions of the Act reflect the "dual Congressional objectives of preserving the right of labor organizations to bring pressure to bear on offending employers in primary labor disputes and of shielding unoffending employers and others from pressures in controversies of their own." *NLRB v. Denver Building Trades Council*, 341 U.S. 675, 692 (1951). However, design of Section 8(b)(4)(B) was not to protect those "in cahoots with" the primary employer. Remarks of Senator Taft, 95 Cong. Rec. 8709 (1949). Those who render services for a struck employer which are the services normally performed by the striking employees cannot be said to be uninvolved in the primary dispute. *NLRB v. Business Machines, Local 459*, 228 F.2d 553 (2d Cir. 1955). Where the General Counsel establishes a *prima facie* case of unlawful secondary conduct on the part of a labor organization, the burden when shifts to the respondent labor organization to establish the existence of an ally relationship if it chooses to rely on that affirmative defense. *Blackhawk Engraving v. NLRB*, 540 F.2d 1296 (7th Cir. 1976); *Drivers, Warehouse & Dairy Employees, Local No. 75 (Seymour Transfer)*, 176 NLRB 530, 532 (1969). Generally speaking, the focus of the inquiry in cases of this nature is on the work being performed by the employer claiming a neutral status (here ARR, Northern, Pacific and VEDCO) and the work which had been performed by the primary employer's striking employees.

By establishing that the Respondent here picketed secondary persons and their employees at locations and times when no ACS employees were present in furtherance of its primary dispute with ACS, the General Counsel here established a *prima facie* case that the Respondent violated Section 8(b)(4)(i) and (ii)(B). *Sailors Union (Moore Dry Dock)*, 92 NLRB 547 (1950). Therefore, the burden shifted to the Respondent to show the existence of the ally relationships it pleads as an affirmative defense.

Respondent's claim that ARR became an ally by transporting containers from Seward to Anchorage lacks merit. Transporting containers such distances over-the-road was never unit work. On the contrary, it is clear that the unit employees were limited strictly to local cartage of Respondent's inventory which was historically transported to Anchorage by Sea-Land and Tote. Unit employees continued substantially equivalent work by transporting containers from ARR's yard after the strike. The work performed by the railroad was, if anything, work formerly performed by Sea-Land and was occasioned by Sea-Land's refusal to book for ACS not the refusal of ACS employees to perform their regular services to bring economic pressure on their employer. Additionally, there is no evidence that ACS even has the capacity to do such work. Accordingly, it is concluded that Respondent has not met its burden of showing ARR was an ally by evidence related to ARR's transporting of ACS containers form Seward to Anchorage.

I am also satisfied that ARR did not lose its neutral status by transporting nonbeer items on the hydrotrain system after the strike commenced. Although it is true that in the previous 2 years ACS had not utilized the hydrotrain to transport nonbeer products, there is no evidence that ACS's right to ship in this fashion was compromised by its most recent practices or by any agreement with Respondent. Absent a showing otherwise, it is evident that ACS retained the option of using this means of transportation and this option was not forfeited merely because its employees choose to go on strike. However, even assuming that the utilization of the hydrotrain system to haul nonbeer products by hydrotrain system indirectly affected the work of the container-skeleton driver or drivers as the Respondent contends, there is no showing that a significant impact on unit work occurred. The fact that ACS has previously shipped nonbeer products by hydrotrain and the fact that the unit work which may have been displaced by the post-strike use of the hydrotrain system appears not to have been significant, gives rise to the conclusion that, in normal times, ACS would be under no obligation to consult with the Respondent concerning such a change. See, e.g., *Westinghouse Electric Corp.*, 150 NLRB 1574 (1965). If, as I believe, this encroachment upon unit work by ARR is so minor as to not even require consultation between the principals in this dispute, I find it exceedingly illogical to rely on such an encroachment as a basis for concluding that ARR's neutrality was destroyed. Any such conclusion would not be, in my opinion, a proper balancing of the "dual Congressional objectives" found in Section 8(b)(4) of the Act. To conclude otherwise would put

ARR in the posture of having to employ expert business analysts to determine whether or not it could accept shipments from ACS without compromising its neutrality. Accordingly, it is my conclusion that Respondent has failed to demonstrate that ARR forfeited its neutral status by transporting nonbeer products after the strike commenced and other shippers refused to regularly serve ACS especially where, as here, ARR had performed such work in the past. *Chemical Workers Local 61 (Sterling Drug,)*, 189 NLRB 60 (1971); *Seymour Transfer, supra* at 530.[8]

I further reject Respondent's effort to justify its December picketing of the Seward facility on the ground that VEDCO—which appears to have been present on ARR's Seward premises at all times while the picketing occurred in December—was an agent or an ally of ACS. Typically, the status of a tower (here VEDCO) is that of an independent contractor. (70 Am. Jur. 2d, Sec. 564.) The towage agreement herein is clearly indicative of the independent contractor status of VEDCO and there is no evidence in the record to establish that VEDCO surrendered in any significant fashion its right to control the manner or the means of performing the work it was engaged to perform. On the contrary, the evidence indicates otherwise where, as here, it was shown that en route to Seward the *Polar Merchant* captain made the decision to cut the tow because of engine trouble.[9] Accordingly, I find that VEDCO, like ARR, Northern and Pacific, was, at all times, an independent contractor. Moreover, as VEDCO at no time performed work which had previously been performed by unit employees, it did not become an ally of ACS.

For the foregoing reasons, it is concluded that Respondent has failed in its burden of establishing the ally affirmative defense which it pleaded. Accordingly, I find that by its picketing of the ARR premises in Seward commencing on August 25 and December 21, and by its picketing at the ARR premises in Anchorage commencing on August 30, Respondent violated Section 8(b)(4)(i) and (ii)(B) of the Act. In view of this conclusion, I find it unnecessary to address the parties' other contentions.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The unlawful activities of Respondent described in section III, above, occurring in connection with the business operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, it is recommended that the Respondent be ordered to cease and desist therefrom and to take certain affirmative action set forth in the recommended Order, below, designed to effectuate the policies of the Act.

CONCLUSIONS OF LAW

1. By picketing ARR, VEDCO, and Pacific with an object of forcing or requiring them to cease doing business with ACS, Respondent has engaged in an unfair labor practice within the meaning of Section 8(b)(4)(i) and (ii)(B) and Section 2(6) and (7) of the Act.

2. By picketing Northern with an object of forcing or requiring it to cease doing business with ARR in order to force or require ARR to cease doing business with ACS, Respondent has engaged in an unfair labor practice within the meaning of Section 8(b)(4)(i) and (ii)(B) and Section 2(6) and (7) of the Act.

Pursuant to Section 10(c) of the Act and upon the foregoing findings of fact and conclusions of law, and the entire record herein, I hereby issue the following recommended:

ORDER[10]

The Respondent, General Teamsters Local 959, State of Alaska, Anchorage, Alaska, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Inducing or encouraging any individual employed by The Alaska Railroad, Northern Stevedoring and Handling Corporation, Vessel Engineering and Development Corporation, Alaska Aggregate, Inc., d/b/a Pacific Western Lines, or any other person, to engage in a strike or refusal in the course of his employment to perform any services, where an object thereof is forcing or requring the Alaska Railroad, Vessel Engineering and Development Corporation, Alaska Aggregate, Inc., d/b/a Pacific Western Lines or any other person, to cease doing business with Odom Corporation d/b/a Anchorage Cold Storage, or forcing or requiring Northern Stevedoring and Handling Corporation or any other person to cease doing business with The Alaska Railroad in order to force or require The Alaska Railroad to cease doing business with Odom Corporation d/b/a Anchorage Cold Storage.

(b) Threatening, coercing, or restraining The Alaska Railroad, Northern Stevedoring and Handling Corporation, Vessel Engineering and Development Corporation, Alaska Aggregate, Inc., d/b/a Pacific Western Lines, or

[8] In citing *Sterling* I am mindful that the General Counsel has publicly expressed the view that it is no longer viable. See General Counsel's Advice Memoranda in *Teamsters Local 294 (Mohawk Chevrolet)*, 100 LRRM 1634 (1979). In my judgment, the General Counsel's rationale in footnote 2 of that memoranda for doubting the continued viability of *Sterling* is self-contradictory. In *Teamsters Local 804 (B. F. Goodrich)*, 199 NLRB 1167 (1972); *Teamsters Local 375 (Irish Welding)*, 204 NLRB 486 (1973); and *Teamsters Local 743 (MacMillan Science)*, 231 NLRB 1332 (1977), the work performed by otherwise neutral employers was clearly bargalning unit work. In *Sterling*, the neutral performed work of other neutrals who refused to do business with *Sterling* after the strike. That is precisely the situation here.

[9] The tow was subsequently recovered.

[10] In the event no exceptions are filed as provided in Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes. All outstanding motions inconsistent with this recommended Order are hereby denied.

any other person, where an object thereof is forcing or requiring The Alaska Railroad, Vessel Engineering and Development Corporation, Alaska Aggregate, Inc., d/b/a Pacific Western Lines, or any other person, to cease doing business with Odom Corporation d/b/a Anchorage Cold Storage, or forcing or requiring Northern Stevedoring and Handling Corporation or any other person to cease doing business with The Alaska Railroad in order to force or require The Alaska Railroad to cease doing business with Odom Corporation d/b/a Anchorage Cold Storage.

2. Take the following affirmative action, which will effectuate the policies of the Act:

(a) Post at its offices and meeting halls copies of the attached notice marked "Appendix."[11] Copies of said notice, on forms provided by the Regional Director for Region 19, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(b) Furnish to the Regional Director signed copies of the notice for posting by Odom Corporation d/b/a Anchorage Cold Storage, The Alaska Railroad, Northern Stevedoring and Handling Corporation, Vessel Engineering and Development Corporation, and Alaska Aggregate, Inc., d/b/a Pacific Western Lines, if willing, in places where they customarily post notices to their employees.

(c) Notify the Regional Director, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

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[11] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."